

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GUSTAVO COLIN LOPEZ,
Plaintiff,

v.

WARDEN, SAN QUENTIN PRISON, et
al.,
Defendants.

Case No. [19-cv-04108-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a federal prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim

1 is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)
2 (citations omitted). Although in order to state a claim a complaint "does not need detailed
3 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
4 to relief' requires more than labels and conclusions, and a formulaic recitation of the
5 elements of a cause of action will not do. . . . Factual allegations must be enough to
6 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
7 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state
8 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme
9 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal
10 conclusions can provide the framework of a complaint, they must be supported by factual
11 allegations. When there are well-pleaded factual allegations, a court should assume their
12 veracity and then determine whether they plausibly give rise to an entitlement to relief."
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
15 elements: (1) that a right secured by the Constitution or laws of the United States was
16 violated, and (2) that the alleged deprivation was committed by a person acting under the
17 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 **LEGAL CLAIMS**

19 Plaintiff alleges that defendants failed to protect him from an assault by another
20 inmate.

21 The Eighth Amendment requires that prison officials take reasonable measures to
22 guarantee the safety of prisoners. *Farmer*, 511 U.S. 825, 832 (1994). In particular,
23 prison officials have a duty to protect prisoners from violence at the hands of other
24 prisoners. *Id.* at 833; *Cortez v. Skol*, 776 F. 3d 1046, 1050 (9th Cir. 2015); *Hearns v.*
25 *Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005). The failure of prison officials to protect
26 inmates from attacks by other inmates or from dangerous conditions at the prison violates
27 the Eighth Amendment when two requirements are met: (1) the deprivation alleged is,
28 objectively, sufficiently serious; and (2) the prison official is, subjectively, deliberately

1 indifferent to inmate health or safety. *Farmer*, 511 U.S. at 834. A prison official is
2 deliberately indifferent if he knows of and disregards an excessive risk to inmate health or
3 safety by failing to take reasonable steps to abate it. *Id.* at 837.

4 “In a § 1983 or a *Bivens* action – where masters do not answer for the torts of their
5 servants – the term ‘supervisory liability’ is a misnomer. Absent vicarious liability, each
6 Government official, his or her title notwithstanding, is only liable for his or her own
7 misconduct.” *Iqbal*, 556 U.S. at 677 (finding under *Twombly*, 550 U.S. at 544, and Rule 8
8 of the Federal Rules of Civil Procedure, that complainant-detainee in a *Bivens* action
9 failed to plead sufficient facts “plausibly showing” that top federal officials “purposely
10 adopted a policy of classifying post-September-11 detainees as ‘of high interest’ because
11 of their race, religion, or national origin” over more likely and non-discriminatory
12 explanations).

13 A supervisor may be liable under section 1983 upon a showing of (1) personal
14 involvement in the constitutional deprivation or (2) a sufficient causal connection between
15 the supervisor’s wrongful conduct and the constitutional violation. *Henry A. v. Willden*,
16 678 F.3d 991, 1003-04 (9th Cir. 2012). Even if a supervisory official is not directly
17 involved in the allegedly unconstitutional conduct, “[a] supervisor can be liable in this
18 individual capacity for his own culpable action or inaction in the training, supervision, or
19 control of his subordinates; for his acquiescence in the constitutional deprivation; or for
20 conduct that showed a reckless or callous indifference to the rights of others.” *Starr v.*
21 *Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011) (citation omitted). The claim that a
22 supervisory official “knew of unconstitutional conditions and ‘culpable actions of his
23 subordinates’ but failed to act amounts to ‘acquiescence in the unconstitutional conduct
24 of his subordinates’ and is ‘sufficient to state a claim of supervisory liability.’” *Keates v.*
25 *Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (quoting *Starr*, 652 F.3d at 1208) (finding that
26 conclusory allegations that supervisor promulgated unconstitutional policies and
27 procedures which authorized unconstitutional conduct of subordinates do not suffice to
28 state a claim of supervisory liability).

1 Plaintiff argues that he was mistakenly released from federal custody and
2 transferred to San Quentin State Prison ("SQSP") while he awaited deportation by federal
3 authorities. At SQSP plaintiff was walking to his housing unit when a riot broke out and
4 he was assaulted by an unknown individual. He states he was rendered unconscious
5 and suffered serious injuries. While he was recovering from his injuries he was deported
6 to Mexico. It appears this incident occurred sometime between 2013 and 2015.

7 The original complaint was dismissed with leave to amend to provide more
8 information. The only defendants were the Warden of SQSP, the Sheriff of Santa Clara
9 County and the Director of Immigration and Customs Enforcement. Yet, plaintiff failed to
10 describe the actions of any defendant or any individual. To state an Eighth Amendment
11 violation, plaintiff must identify specific defendants and describe how they were
12 deliberately indifferent to his safety. Plaintiff was informed that simply stating that there
13 was a riot and he was injured was insufficient. He must present allegations that
14 defendants knew of and disregarded a risk to his safety and failed to take reasonable
15 steps to protect him. Also, that some of these defendants are supervisors was
16 insufficient. He must describe either personal involvement in the constitutional
17 deprivation or a sufficient causal connection between the supervisor's wrongful conduct
18 and the constitutional violation.

19 Plaintiff has failed to address these deficiencies in the amended complaint and
20 presents the same general allegations regarding the failure to protect claim. Plaintiff also
21 argues that a new defendant doctor failed to properly treat him, yet he does not provide
22 specific allegations concerning his injuries and how the doctor was deliberately indifferent
23 to his serious medical needs. Plaintiff must present more information how the doctor
24 allowing him to be released from custody for deportation violated his constitutional rights
25 with respect to his injuries. The amended complaint is dismissed, and plaintiff will be
26 provided one final opportunity to amend and provide more information to state cognizable
27 claims.
28

CONCLUSION

1. The amended complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The second amended complaint must be filed no later than **February 18, 2020**, and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to file an amended complaint may result in dismissal of this case.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: January 15, 2020

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON
United States District Judge